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March 1, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: D.T.E. 04-116- Investigation by the Department of Telecommunications and Energy On Its Own Motion Regarding the Service Quality Guidelines Established in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001)

Dear Secretary Cottrell:

Please find attached an original and nine (9) copies of the Initial Comments of New England Gas Company in the above-referenced proceeding. The comments include responses to questions asked by the Department in its Vote to Open Investigation in this proceeding. In general, the responses were developed jointly with the other Massachusetts gas companies ("LDCs"), as encouraged by the Department, and, as such, several of the responses include language similar to the responses filed by other LDCs in this proceeding.

An executive summary is also included. Please contact me or Kevin Penders at the Company if you have any questions regarding the Company's Initial Comments.

Very truly yours,

John K. Habib

Enclosure
cc: Caroline Bulger
Kevin Penders
Peter Czekanski
Joseph Rogers

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications & Energy Into Amending its Service Quality Guidelines	D.T.E. 04-116

COMMENTS OF NEW ENGLAND GAS COMPANY

I. EXECUTIVE SUMMARY

On December 13, 2004, the Department of Telecommunications and Energy ("Department") opened an investigation to determine what changes, if any, are necessary to improve on the service-quality guidelines ("SQ Guidelines") established in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001). The Department's investigation in this proceeding is docketed as D.T.E. 04-116. As part of its investigation, the Department solicited comments on proposed changes to the SQ Guidelines relative to: (1) offsets; (2) odor calls; (3) staffing levels; (4) standardization of the SQ performance benchmarks; (5) incentives; (6) customer service guarantees; (7) property damage; (8) line loss; (9) double poles; and (10) SAIDI/SAIFI. New England Gas Company (the "Company") is pleased to offer its initial comments addressing the gas-related questions raised by the Department in this proceeding.

There are two specific points the Company would like to make up front. First, the Department should not make any fundamental changes to the structure of its SQ Guidelines. In particular, the underlying need for the offset component of the Department's Guidelines remains unchanged since the Department's implementation of the SQ Guidelines in 2001. Three years into implementation of the Guidelines, the

Company has less than half of its service quality categories with fixed benchmarks (i.e., based on ten years worth of data). Therefore, offsets allow the Company the flexibility it needs to operate in an environment where the threshold for penalties will fluctuate for as many as the next eight years.

Second, with regard to odor calls, the Company holds no priority higher than to respond to odor calls as quickly as possible and to ensure that customers receive safe and reliable service. For that reason alone, the Company's commitment to achieving and surpassing the 95 percent threshold for odor call performance has resulted in a four-year average odor call response percentage of 99.44 percent for the Fall River Service Area and the North Attleboro Service Area combined. However, the Company's commitment to responsiveness on the odor call measure should not in and of itself be a reason to set the benchmark higher. The 95 percent threshold is an accepted industry standard, and adjusting this percentage higher would serve only to serve as a basis for penalizing the Company, and the gas industry as a whole, despite past achievement and continued commitment to respond to odor calls as quickly as possible.

Similarly, with regard to "missed" service appointments, the Company maintains has achieved a 99.6 percent combined, three-year average for service appointments in the Fall River Service Area and North Attleboro Service Area. However, the Company's historical success in this category actually reduces the Company's flexibility to conduct its service appointments without incurring a penalty. Circumstances beyond the Company's control, such as weather or an incident requiring staff resources, require the Company to conduct its business in a manner shows commitment to the safety and

reliability of service, and therefore, a level of flexibility is needed in scheduling routine customer-service appointments.

The comments below will further discuss these three areas, as well as addressing the remaining areas where the Department has solicited comment. As a final note, these comments were developed in close collaboration with the other gas utilities doing business in Massachusetts and are intended to reflect the results of that collaboration.

II. COMMENTS

1. Offsets: *Currently, if an LDC incurs a potential penalty for substandard performance in a penalty provision measure, the Guidelines allow that LDC to offset that penalty if the LDC exceeded its benchmark in other penalty provisions. Please discuss whether the offset provision offers an incentive for an LDC to improve SQ and whether the use of penalty offsets should be continued in the future Guidelines.*

The offset component of the service-quality penalty mechanism serves two important functions and should be continued in future Guidelines. First, the Department adopted the offset component for a specific purpose, i.e., to address concerns regarding the mathematical underpinnings of the standard-deviation calculation used to establish the performance deadbands. With only three years of additional data available, these concerns are undiminished, and therefore, the need for this "safeguard" remains unchanged in terms of future guidelines. Second, the offset component provides an incentive to improve service quality, even though the incentive is not strictly monetary. Both of these points are discussed in detail below.

A. The Underlying Need for the Offset Component Remains Unchanged

In Service Quality Guidelines, D.T.E. 99-84 (2001) ("D.T.E. 99-84"), the Department linked the inclusion of the offset provision to concerns regarding the accuracy of the deadband calculation. D.T.E. 99-84, at 28. With only three additional

data points in hand since the conclusion of the D.T.E. 99-84 proceeding, the concerns over the accuracy of the deadband calculation have not been abated. Therefore, in determining whether offsets should be included in future guidelines, it is important to give consideration to the overarching design and operation of the service-quality program as it was initially conceived and implemented by the Department in D.T.E. 99-84.

Early in the Department's efforts to devise a generic service-quality measurement system, the Department identified the need to establish a "deadband" around a utility's historical average performance to differentiate normal year-to-year variations in utility performance from actual degradations in service, before penalties would be assessed. D.T.E. 99-84, at 47 (August 17, 2000) (the "Interim Order"). Normal year-to-year variations in performance occur because weather, price volatility, economic cycles and a range of other external factors beyond the control of management have an impact on the level of service required by customers at any given time. Interim Order at 47; D.T.E. 99-84, at 27. For example, extremely cold or stormy weather can cause service outages and can generate a substantial increase in the numbers of customers calling the company and/or requesting service visits. See, id.; Initial Joint Comments of Utilities at 23-24, Appendix B at 3-5 and 6-7 (filed November 10, 2000) ("Initial Comments"); Supplemental Joint Comments of Utilities at 4 (filed June 6, 2001) ("Supplemental Comments"). Sometimes a utility may be faced with increased service requirements stemming from a number of external factors in combination. Id. Because the utility cannot always foresee these events, the utility has no ability to control or avoid variations in performance on a year-to-year basis. Id.

The utility's inability to control for these external factors is important because the Department has founded the penalty mechanism on the underlying premise that management has control over the level of service-quality provided to customers and that the imposition of penalties will influence management decisions on service-related issues. D.T.E. 99-84, at 29; Interim Order at 44-47, 49 at fn.37. In that regard, the Department has stated that the purpose of SQ penalties is to "provide an impetus for gas and electric companies to conduct themselves in such a way that there is no need to impose monetary penalties in the first place." D.T.E. 99-84, at 29, fn.27. The Department has also stated that "companies seeking to avoid penalties have a readily available remedy, which is to "conduct their business in a manner that maintains SQ measures and avoids the imposition of penalties. D.T.E. 99-84, at 29. Thus, a critical underpinning of the overall service-quality program is that utilities will be assessed penalties only where (1) there is a level of certainty that service has actually degraded below historical levels (Interim Order at 43, 47); and (2) the degradation in service is under the control of management. Interim Order at 49; D.T.E. 99-84, at 29, fn.27. Accordingly, the inclusion of deadbands in the overall design of the penalty structure is explicitly intended to ensure that utilities are not penalized for events or circumstances that have a negative impact on service-quality performance, but are not caused by the utility, nor are under the utility's control.[1] D.T.E. 99-84-B at 2, 5; D.T.E. 99-84, at 27.

To establish the deadband, the Department adopted the approach of computing a "standard deviation" using the utility's own, available historical performance data.

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1 This is referred to as a "Type 1" error. A "Type 1" error occurs when a utility is penalized for a measurement that deviates from the historical benchmark and the deviation is a result of random variation in the data rather than an actual deterioration in the service-quality efforts of the utility. D.T.E. 99-84, at 27, fn.24.

D.T.E. 99-84, at 3. Standard deviation is a mathematical construct that measures the amount of variation in a data set based on the collective difference between the individual data points and the average (or mean) of the data set. See, D.T.E. 99-84, at 23-26. See, Joint Initial Comments of the Utilities at 25, Appendix B at 9-12, 21-22; Joint Supplemental Comments at 5-7. However, the record in D.T.E. 99-84 was clear and comprehensive on the point that standard deviation is not a statistically valid concept where there are relatively few available data points. Under generally accepted mathematical principles, at least 30 data points are needed for a valid calculation of a standard deviation. D.T.E. 99-84, at 22; Supplemental Joint Comments of the Utilities at 6, citing Statistical Concepts and Methods, G. Bhattacharyya and R. Johnson (1977). This is because there is little statistical confidence that the (limited) data set encompasses the performance data points that the utility would normally record under the full range of external factors affecting the utility's operations. Id.

If the actual variability of a utility's performance data is not captured in the standard-deviation calculation, there is an increased possibility that the utility will be penalized for performance that simply varies from the historical average rather than representing a deterioration of service. Id. at 22-23. In adopting the standard deviation approach, the Department explicitly recognized that the use of "company-specific historical data" would "necessarily result in sample sizes of ten [years] or less." D.T.E. 99-84, at 27. In addition, the Department noted the "statistical probability that the standard deviation approach will result in a 16 to 18 percent chance of Type I errors," in light of the limited available data. D.T.E. 99-84, at 27-28. Accordingly, the Department found that:

> In order to provide an additional safeguard against the probability of a company being subject to a SQ penalty for random variations in performance, the Department shall incorporate an "offset" feature to the penalty mechanism. . . . The Department considers a standard deviation approach that includes a system of monetary offset credits best achieves our goal of balancing the risk of Type I errors with the risk of Type 2 errors.[2]

D.T.E. 99-84, at 28.

With an asymmetrical system, random variations in the data have the potential to cause unwarranted penalties, but have no potential to put the utility into an "upside" position. This is inherently unfair and unreasonable because, under the standard-deviation approach (with limited data points): (1) there is no certainty that service has actually degraded below historical levels; and (2) there is no reliable indication that management has done anything to influence its performance negatively. The offset component is designed to provide the utility's management with an opportunity to use the upside potential to offset the downside potential of inappropriate penalties. D.T.E. 99-84, at 28. Accordingly, the Department's decision to incorporate the offset provision was one of fundamental fairness given the record evidence contesting the accuracy of the standard-deviation computation when based on limited historical data.

At the time the Department adopted the offset provision, the historical data available was limited or non-existent, with a maximum of five or six years available for one or two measures.[3] See, e.g., D.T.E. 99-84, at 5-6, fn.6, 27-28. The Department

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2 A "Type 2" error occurs when a degradation of service occurs but goes undetected and un-penalized. D.T.E. 99-84, at 27, fn.24.

3 For example, in the Company's 2004 SQI Annual Report, there are seven areas for benchmark calculations to be determined based on ten years of historical data. However, of those seven, only three are fixed for the Fall River Service Area (lost time accident rate, service appointments kept, and telephone answering factor), and only two are fixed for the North Attleboro Service Area (telephone answering factor and service appointments kept).

explicitly provided that there is a statistical probability that the standard-deviation approach will result in a 16 to 18 percent chance of Type I errors. D.T.E. 99-84, at 27-28; SQ Guidelines at Section I.C. Therefore, the Department adopted the offset provision to act as a "safeguard" against inappropriate penalties. D.T.E. 99-84-B at 2; D.T.E. 99-84, at 28. Although the utilities have accumulated up to three more years of data since the Department commenced the SQ Plans in accordance with D.T.E. 99-84, the overall amount of available data still falls far short of what is needed to ensure the mathematical integrity of the standard-deviation calculation.

Accordingly, the Department's rationale for adopting an offset mechanism in D.T.E. 99-84 continues to apply in 2005 – and for the foreseeable future. Deadbands are an indispensable element of the Department's SQ program because there is an acknowledged need to allow for normal year-to-year variability in the performance data. Under the Department's SQ program, deadbands are calculated using a standard-deviation computation that relies on a utility's own historical data. Since the amount of historical data available is extremely limited in comparison to the number of data points needed to ensure the validity of the standard-deviation calculation, there is no way to fairly and reasonably ensure that the utility will not be penalized for normal variations in performance, except to allow the utility to use the "upside" potential of this uncertainty to offset penalties. Therefore, because the need for this "safeguard" remains unchanged, any decision by the Department to discontinue the use of penalty offsets will undermine the integrity of the Department's overall service-quality regime.

B. The Offset System Provides an Incentive to Improve Service

In addition to providing a safeguard against inappropriate penalties, the offset provision provides an incentive to utilities to strive to improve performance. There are three main reasons that this incentive exists. First, there are instances where the utility may be in a penalty position on a particular measure as a result of one-time operational changes or other singular events that are not outside the utility's control, but are also not the result of service degradations. For example, if the utility decides to change its practices to be more aggressive on the collection of overdue customer accounts, it may experience a marked increase in customer calls that ultimately results in reported annual performance beyond the deadband threshold. The symmetrical offset provision gives the utility the incentive to work to increase service on other measures to mitigate the effect of this one-time operational change.

Second, the offset provision is effective in signaling above-average performance to employees, customers, shareholders and the Department. Although the primary (and statutory) purpose of the service-quality program is to ensure against a degradation of service under a performance-based rate plan or merger-related rate plan, many companies have used the service-quality requirements to set internal goals for improved company performance. Many companies have established new internal departments to measure, track and report service-quality performance statistics. Service-quality targets are known throughout the companies and, in many cases, employee compensation is tied to the achievement of the benchmark targets. Thus, the symmetrical offset component provides a basis for quantification of the success of these efforts. In addition, utilities are able to provide verifiable and objective information to customers (and the Department) on both

the successes and challenges they face in providing service to customers. Therefore, the symmetrical offset system, although non-monetary, serves an important function and should be continued in future Guidelines.

Lastly, the offset component serves an important function in counterbalancing an idiosyncrasy of the Department's benchmark system. Specifically, an issue arises under the Department's current benchmark system because the historical average and standard deviation for benchmarking are based on a utility's ten most recent years of data. Service Quality Guidelines at Section I.C (hereinafter, "SQ Guidelines"). Therefore, if a utility has 10 years of data available for a particular measure, the benchmark is fixed for the "duration of the PBR." Id. However, if the utility has less than 10 years of annual data available, new performance data is rolled in to the historical average on a year-to-year basis until such time that 10 data points are incorporated into the benchmark. Id. The dynamic that occurs with the continual incorporation of new performance data is that the benchmark may be raised above historical levels in circumstances where the utility has greatly improved its service after the commencement of the SQ Plan. With an ever-increasing benchmark, there is the potential that a utility could be penalized for service that falls below the new deadband threshold, but in fact, is at a level that exceeds the level of service provided to customers at the outset of the SQI Plan.[4]

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4 Utilities recognize that there is really no way around this dynamic because: (1) it is vital that benchmarks be established using as much historical data as is available to ensure that the deadband computation accurately and fully captures the level of variation that occurs on a distribution system as a result of external business factors; and (2) the Department's SQ framework is new and data must be collected and incorporated into the benchmark to reach the 10-year threshold. Once the 10-year threshold is reached and the benchmarks are fixed, this should not continue to be an issue.

In light of this dynamic, the offset component of the penalty becomes important because it provides an opportunity for the utility to offset penalties that may result from this dynamic with improved performance on other measures.

C. Corrections to the Current Offset System

There are two corrections to the Department's deadband construct that should be given some consideration. First, the Department should consider addressing the lack of symmetry of the offset system on measures where a utility's performance is relatively high, and as a result, the upper threshold of the deadband nears or exceeds the 100 percent mark. In these instances, the utility cannot achieve all or part of an offset because the offset crosses over the 100 percent mark; however the utility is subject to 100 percent of the potential penalty. Thus, if the deadband is not accurately capturing the full range of variability in performance data that the utility would experience in the normal course of operations, the utility could be penalized inappropriately and the coinciding offset to balance that risk is not available for that measure.

For example, a utility may have a benchmark for consumer division cases of 0.241 cases, and a deadband of 0.137 cases. This means that the offset should be available if the Company is able to reduce consumer division cases by more than one standard deviation, or by more than 0.137 cases (i.e., the number of consumer division cases is reduced to 0.104 cases), with the maximum offset occurring at two standard deviations from the benchmark. However, two standard deviations from the benchmark would require performance at -0.033 cases, which is impossible. Accordingly, the utility has the potential to be penalized to the maximum of two standard deviations, but does not

have the maximum coinciding offset available because the deadband threshold exceeds 100 percent.

Another example might be Billing Adjustments. In this example, the benchmark is set at $7.47 dollars per 1,000 residential customers with a standard deviation of $9.03 dollars per 1,000 residential customers. In this case, no offset is available because the Company would have to reduce billing adjustments to -1.56 dollars per 1,000 customers in order to exceed the deadband threshold and obtain the coinciding offset. Accordingly, the utility is subject only to penalties and has no offsets available to act as the safeguard against the possibility that the standard-deviation computation is based on too few data points, and therefore, fails to capture the level of variation in the performance data that the utility actually will experience over time through no fault of its own. To resolve this dilemma, the Department should consider pro-rating the maximum offset that would be available under a symmetrical system over the potential performance range between the deadband threshold and 100 percent performance.

The Department should also consider tailoring its offset system to address issues that may arise where a utility has a very tight deadband relating to its historical performance in a particular service quality category. In these instances, a minor deviation in performance, either positive or negative, could place a company in a penalty or offset situation. To rectify this, the Department should consider establishing a minimum deadband of plus/minus 1 percent for each service quality measure subject to penalty and offsets. This would guard against a utility being subject to penalties in years where its performance deviated negatively only slightly from its benchmark in a particular category, because of the narrowness of the deadband in that particular category.

Conversely, it would prevent the utility from earning offsets for only slightly improved performance in the same category.

2. Odor Calls: *Currently, the benchmark for odor calls is 95 percent, which is an obtainable goal of all gas LDCs. Please discuss whether this benchmark should be strengthened in the future Guidelines and SQ plans and whether multiple calls regarding a single gas leak should be considered as a single odor call response.*

In the natural gas local distribution industry, there is no higher priority for the gas utility than responding to odor calls as quickly as possible. Therefore, it is not surprising that the 95 percent benchmark is not only "obtainable" by LDCs, but is surpassed by LDCs on a year-to-year basis. In that regard, the existing "95 percent" benchmark for responding to odor calls is an appropriate standard because (1) all of the LDCs' historical performance data is based on this standard; (2) the standard is generally accepted throughout the gas industry; and (3) the standard has ensured the safe and reliable delivery of gas to customers in the Commonwealth since its adoption by the Department in D.T.E. 99-84. Moreover, the fact that a particular service-quality goal is "obtainable" is not a basis for setting a higher performance benchmark, unless the main objective of the higher benchmark is to create a greater potential for the utility to be penalized. Accordingly, the existing standard should be continued in future guidelines.

In D.T.E. 99-84, the Department stated that "public safety concerns make it essential for gas distribution companies to achieve and maintain a high performance standard for odor call response times." D.T.E. 99-84, at 39. Therefore, the Department explicitly rejected the use of a company's historical performance in computing the deadband and set a uniform "95 percent" standard for all gas companies operating in the Commonwealth. Id.; D.T.E. 99-84-B at 7. This determination reflected that fact that

most, if not all, of the Massachusetts LDCs had been measuring response times in accordance with this standard for several years prior to the Department's generic proceeding in D.T.E. 99-84, and therefore, the standard was consistent with the historical data maintained by the companies. Moreover, this standard is generally accepted in the gas distribution industry. See, e.g., The Massachusetts Electric and Gas Distribution Companies, *Summary of Findings Related to Service Quality Benchmarking Efforts* at 7 (filed with the Department on December 19, 2002). As a result, it was reasonable and appropriate for the Department to establish the 95 percent benchmark on a statewide basis in D.T.E. 99-84.

As noted above, the fact that a particular service-quality goal is "obtainable" is not a basis for setting a higher performance benchmark. There is no indication that leak-call response times are too long because the 95 percent is "obtainable," and is therefore causing harmful impacts to the public safety and welfare. There has been no instance where the utility's response to an odor call in conformance with the standard has resulted in a gas incident causing personal injury or harm to property. As demonstrated by the performance statistics reported by the LDCs over the past three years, the LDCs are diligent in their efforts to respond to gas odor calls as quickly as possible, and as a result have consistently exceeded the 95 percent benchmark. Accordingly, there is no substantive basis to suggest that a change is necessary or warranted to address a public safety concern.

The Department has previously stated that, "the purpose of SQ penalties is not to maximize the level of penalties collected, but to provide an impetus for gas and electric companies to conduct themselves in a way that there is no need to impose monetary

penalties in the first place." D.T.E. 99-84, at 29, n. 27. The performance statistics of the gas companies confirm that the 95 percent benchmark has provided a strong "impetus" for gas companies to conduct their operations in a manner that should occur even without the Department's service-quality penalty mechanism. Id. Thus, in addition to being consistent with industry practice and imposing a uniformly high standard on all gas companies, the Department's 95 percent benchmark has achieved the precise objective that the Department identified in initiating the service-quality program. Accordingly, no change to the standard is necessary or warranted in future guidelines.

With regard to the second part of the Department's question, it is important to note that gas companies serving customers in the Commonwealth generally treat multiple calls relating a single gas leak as a single odor call response, to the extent that the utility is able to determine (at the time of the incident or through later review) that the succession of calls incoming to the company are stemming from the same location. In these cases, the response time is measured from the point that a work order is opened upon the receipt of the first call to the point that a field representative arrives at the site. Calls to the company in the intervening time period do not "restart the clock" or result in additional response times within the benchmark.

There are instances where multiple calls regarding a single gas leak may be tracked as a distinct work order when an odor call is received at an address that cannot be correlated to the address of an existing work order. These instances are rare and the companies make all reasonable efforts to group calls for a single leak report. Accordingly, no change to the guidelines is warranted or necessary.

2. Staffing Levels: *G.L. c. 164, § 1E (a) requires the Department to establish benchmarks for staff and employee levels of LDCs, and G.L. c.164, § 1E (b) requires that no company may reduce its staffing levels below what they were on November 1, 1997. However, the statute does not define what staffing levels are, e.g., whether they apply only to union employees or to all employees; whether staffing levels should include employees of non-regulated subsidiaries of the LDCs; and whether the lapse in time (between enactment of the statute and adoption of a performance-based rate plan) negates the November 1, 1997 requirement. Further, the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 numbers. Please discuss the role of staffing levels in the future Guidelines.*

The Department's current system of monitoring staffing and service-quality levels fulfills the statutory mandate set forth in G.L. c. 164, § 1E (a), and therefore, no change is necessary in future Guidelines. To meet the requirements of the statute, the Department has established a three-tiered structure involving: (1) a comprehensive service-quality program to detect and penalize companies for degradations in service (SQ Guidelines at VII); (2) the establishment of a benchmark staffing level as of November 1, 1997 and annual reporting of staffing levels in each year thereafter (SQ Guidelines at IV); and (3) a formal investigation into the causes and circumstances of a service decline in any case where performance falls below the established guidelines (SQ Guidelines at VII.A).

This structure satisfies both the stated and implied requirements of Section 1E (a) because it recognizes that there is not necessarily a direct correlation between service-quality levels and reduced staffing, and therefore, the trigger for Department action is a demonstrated decline in service quality, rather than a change in staffing levels. In addition, the Department's system is a reasonable approach to resolve the inherent tension between the underlying purpose of PBR, i.e., to maximize efficiency gains and cost reductions, and the need to ensure that staffing levels are adequate to maintain the quality of service for customers.

A. Statutory Requirements

To determine both the explicit and implicit requirements encompassed in G.L. c. 164, § 1E (a), it is important to consider the language of the statute within the context of the regulatory scheme the Department has established for distribution companies operating in the Commonwealth. In that regard, Section 1E(a) states in relevant parts that:

> (a) The department is hereby authorized to promulgate rules and regulations to establish and require performance based rates for each [gas company]. . . . **In promulgating such performance based rate schemes,** the department shall establish service quality standards for each [company]. . . . [S]uch service quality standards shall include benchmarks for employee staff levels . . . .
>
> (b) In complying with the service quality standards and employee benchmarks established pursuant to this section, a [company] that **makes a performance based rate filing after the effective date of this act** shall not be allowed to engage in labor displacement or reductions below staffing levels in existence on November 1, 1997, **unless such are part of a collective bargaining agreement** or agreements between such company and the applicable organization or organizations representing such workers, **or with the approval of the Department following an evidentiary hearing at which the burden is on the company to demonstrate that such staffing reductions shall not adversely disrupt service quality standards** as established by the department herein.

G.L. c. 164, § 1E (emphasis added). Thus, as an initial matter, Section 1E (a) does not impose the unqualified rule that "no company may reduce its staffing levels below what they were on November 1, 1997," as suggested by the question. Rather, the statutory language explicitly establishes the following:

a. The Department may establish PBR plans for companies under its jurisdiction;
b. For companies commencing PBR plans after November 25, 1997 (i.e., the effective date of the Act), the Department must establish service-quality standards;
c. The Department's PBR-related service-quality standards must include a staffing level "benchmark," established as of November 1, 1997;

d. A company operating under a PBR plan that commenced after November 25, 1997 may reduce staffing levels from the November 1 level, if: (1) those reductions are part of a collective bargaining agreement(s); or (2) the utility can demonstrate that service quality is not adversely affected;

Based on the efforts commenced by the Department following the enactment of the Restructuring Act, the Department has fulfilled each of these four requirements. Specifically, the focus and intent of the Department's generic proceeding in D.T.E. 99-84 was to develop guidelines for SQ measures to be included in PBR plans submitted by gas and electric companies pursuant to Section 1E (a). D.T.E. 99-84, at 40. As a result, the Department's SQ Guidelines satisfy the first and second requirements set forth above.

Further, as part of its clarification order in D.T.E. 99-84, the Department directed distribution companies to submit SQ plans with staffing level benchmarks based on staffing levels in existence on November 1, 1997, except as provided by collective bargaining agreements or other statutory provisions. Order on Clarification, D.T.E. 99-84-B, at 12-13 (2001). The reporting of staffing levels on an annual basis beginning November 1, 1997 addresses the third requirement set forth above.

With respect to the last requirement, the statute provides that staffing levels may be reduced if (1) accomplished pursuant to a collective bargaining agreement; and (2) if the utility demonstrates that reductions have not affected service quality. In that regard, the Department has stated that staffing levels will be determined consistent with Section 1E (b), primarily by collective bargaining agreements, and on a case-by case basis. D.T.E. 99-84-B at 12. The Department's findings on this point are appropriate because the existence of a currently effective collective-bargaining agreement is prima facie evidence that bargaining-unit staffing reductions are being implemented by a company as

part of the agreement. No further action by the Department is necessary, warranted or appropriate in relation to bargaining-unit staffing levels.

Aside from collective bargaining agreements, the statute allows utilities operating under PBR to reduce staffing levels where there is a demonstration that the reductions will not affect service quality. With the SQ Guidelines in place, the Department is able to monitor the interrelation between service-quality levels and staffing levels without inhibiting a utility's ability to make staffing decisions aimed at streamlining and maximizing the efficiency of its operations. The Department is also able to detect and penalize companies for deficient service quality and to investigate whether staffing levels are a contributing factor to the service deficiency. Accordingly, the framework established in the Department's existing Guidelines fulfills the final requirement of Section 1E (a).

B. Response to the Department's Specific Questions on Staffing Benchmarks

The question posed by the Department in this proceeding asks for specific input on the following points: (1) the statute does not define what staffing levels are, e.g., whether they apply only to union employees or to all employees; (2) whether staffing levels should include employees of non-regulated subsidiaries of the LDCs; (3) whether the lapse in time (between enactment of the statute and adoption of a performance-based rate plan) negates the November 1, 1997 requirement; and (4) the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 numbers. All of these issues are addressed with the Department's existing SQ Guidelines given its emphasis on (1) the measurement and quantification of service-quality performance in comparison to historical performance data; and (2) the identification of a decline in

service quality as a prerequisite to an investigation into the reasons for that service decline, including reduced staffing levels.

Specifically, it is important to consider that the underlying concern of the statute, as well as the Department's efforts on PBR, is that there should be no decline in service quality as a result of a utility's cost-cutting efforts. Interim Order at 3-4. Because it is really the decline in service quality that is the concern, it is not reasonable to establish staffing level reductions as the trigger for an investigation into the impact of those reductions. Rather, to be consistent with the fundamental purpose of PBR, the appropriate trigger for an investigation by the Department into the linkage between staffing levels and service quality is the deterioration of utility performance in comparison to historical levels. The Department's SQ framework deals with this linkage effectively because the performance measures cover a range of utility activities, and therefore, allow the Department to first pinpoint whether there is a service-quality problem in a specific operational area and then to determine whether staffing levels *in that area* may have had an impact on the utility's performance on that particular measure. Without an indication that service-quality has deteriorated, there is no basis for the Department to conclude that staffing reductions are inconsistent with the statute because utilities are explicitly allowed to reduce staff where it is demonstrated that service-quality is not impaired.

Therefore, under the Department's existing framework, there is no need to "define what staffing levels are," or to determine whether it applies to union employees, employees of unregulated operations or all employees. The level of service quality provided by a utility is not necessarily a function of the number of people employed by

the utility at any level or subdivision of the company. A company may reduce staff without causing the slightest change in the level of service provided to customers because, in practice, staffing levels and service-quality levels may be wholly unrelated. The Department's focus on first identifying a service-quality problem and then determining whether staffing levels in that area are a contributing factor to the service-quality problem obviates the need to determine whether the statute is referring to a particular category of employees.

Similarly, the Department's framework is an effective tool to address the fact that, over time, the staffing level existing as of November 1, 1997 will have little connection or relevance to the utilities' ongoing operations. Even in just the past seven years, the gas and electric distribution industries have experienced dramatic change as a result of the unbundling of utility services, asset divestitures, the implementation of technological improvements, the emergence of competitive markets and mergers and acquisitions. These events have caused fundamental changes in the structure of utility operations and have provided substantial opportunities for utilities to cut costs through staff reductions.[5] The Department's SQ Guidelines ensure that these changes occur without any detriment to customers in terms of service-quality levels.

Lastly, under the Department's structure, utilities are penalized if staffing reductions cause the level of service provided by the utility to fall below historical levels. This is important because "cause and effect" is the only basis for the Department to take action under the statute in relation to staffing levels. The statute does not suggest that the Department has authority to penalize companies for staff reductions below the

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5 For the most part, these reductions have been achieved through attrition and voluntary employee severance plans and not through actions by the utilities to cut staff.

November 1, 1997 level in the absence of a determination that those reductions have caused a service-quality problem, nor would it be reasonable to make such a suggestion. In fact, the statute explicitly allows staffing reductions after November 1, 1997, if those reductions do not affect service quality. The Department's existing penalty framework already incorporates an appropriate sanction for staffing level reductions that lead to a deterioration in service-quality levels.

Under the Department's existing framework, the focus is appropriately placed on the level of service currently provided by utilities and the comparison of those levels to performance benchmarks based on the utility's own historical service data. Accordingly, the Department has reasonably and appropriately incorporated the statutory mandate regarding staffing level benchmarks into the SQ Guidelines and no change is necessary or warranted in future guidelines.

4. Standardization of SQ Performance Benchmarks: *In D.T.E. 99-84, at 3-4, the Department required that LDCs collect any data that may be necessary for the Department to revisit, in the future, the issue of using benchmarks based on nationwide, regionwide, or statewide data. The LDCs sent the Department a report on December 19, 2002 concluding that using the historical performance of each LDC on the respective performance measures remains the best method for establishing performance benchmarks. Summary of Findings Related To Service Quality Benchmarking Efforts, Navigant Consulting, Inc. (December 19, 2002). Please comment.*

There is an important distinction between the standardization of "performance measures" and the establishment of uniform or comparative "performance benchmarks." In terms of establishing the benchmark against which a utility's performance will be measured on a year-to-year basis, the findings of the Report submitted to the Department on December 19, 2002 by the gas and electric utilities remain applicable today, i.e., the historical performance of gas and electric companies operating in the Commonwealth is

the best data available for the development of valid and appropriate performance benchmarks.

The overarching design of the Department's SQ framework is that it establishes a system to: (1) measure service quality; (2) assess whether, on a year-to-year basis, a utility is maintaining, improving or declining in relation to the expected (historical) level of service; and (3) penalize utilities that have not taken the actions necessary (and under their control) to maintain service quality at historical levels. Interim Order at 43-49. Under this system, the establishment of valid and appropriate performance benchmarks is vital to the integrity of the overall SQ system because without valid benchmarks, there is no way to determine whether a utility's performance is actually improving, declining or staying the same – and in turn, no basis for the imposition of SQ penalties (or offsets).

In the *Summary of Findings Related To Service Quality Benchmarking Efforts* (Navigant Consulting, Inc.), filed with the Department on December 19, 2002 (the "Benchmarking Report"), the distribution companies provided the Department with a comprehensive evaluation of the potential for using national, regional or statewide data to establish uniform or comparative performance benchmarks across the utilities serving customers in the Commonwealth. Benchmarking Report at 1-2. In the Benchmarking Report, the distribution companies detailed their efforts to review information from other state jurisdictions, federal agencies,[6] industry associations[7] and commercial data resources in order to determine whether there was any basis to establish performance

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6 Federal agencies included the Department of Energy, the Department of Labor, the Federal Energy Regulatory Commission, and the Occupational Safety and Health Administration.

7 Industry associations included Electric Edison Institute, the Institute of Electrical and Electronics Engineers, the American Gas Association, the National Regulatory Research Institute and the National Association of Regulatory Utility Commissioners.

benchmarks on something other than historical company-specific performance data. Id. at 3-4, 7-12. The Benchmarking Report concluded that there are significant limitations in terms of the validity and applicability of using national, regional and statewide data to establish uniform or comparative performance benchmarks. Id. at 13-14, 16-22, 23-24.

Specifically, the Benchmarking Report concluded that there are inherent differences among utilities in terms of data-collection methods, data quality, geography, distribution system design and configuration and weather impacts that make it virtually impossible to establish standardized performance benchmarks that would have validity in terms measuring (and penalizing) the performance of a specific Massachusetts-based utility. Benchmarking Report at 13, 16-23. These differences are significant because it is not possible to make comparisons among utilities if, for example, they are not computing the performance statistics in the same way or are not operating under the same economic, business and natural environments. Id. at 16. Similarly, a uniform benchmark is not appropriate where utilities are faced with differing operational, demographic and geographic challenges. Id. at 16-23.

None of these considerations have changed in the three years since the Department's ruling in D.T.E. 99-84. Although the Department and various industry groups have made progress in terms of the standardization of performance measures through the adoption of common definitions and data-collection practices, nothing has occurred since the filing of the Benchmarking Report to change the fact the only feasible and analytically sound approach to evaluating a utility's performance is to compare its current performance to its past performance, as demonstrated in the Benchmarking Report.

In fact, if the Department were to move to a system of uniform benchmarks, it would represent a fundamental shift in the underlying theory of the Department's service quality policies. The Department's service quality policies presume that customers are due a particular level of service based on the rates that they pay to the utility to provide that service. Those rates recover historical costs incurred by the utility to provide service to its customers.

Accordingly, the Department has analogized the payment of penalties relating to degraded service quality to the payment of liquidated damages in contract law, noting that "compensation takes the form of the delinquent utility's sacrifice of a pre-ordained percentage of revenues." Interim Order at 44. If the Department were to set benchmarks based on uniform standards, unrelated to a utility's historical performance, the Department would be de-coupling the link between the provision of service and the utility's historical incurred costs to provide that service. Therefore, for this reason and the reasons outlined above, the Department should not establish uniform benchmarks to measure service quality performance.

5. SQ Incentives:..*Please comment as to whether any LDC should be allowed to collect incentives for SQ performance. MECo and Nantucket Electric Company (collectively "MECo"), are allowed to collect incentives back from ratepayers if it exceeds its benchmarks in the penalty provisions. The Department approved incentives as part of MECo's SQ plan because MECo's prior SQ plan, pursuant to Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47, at 13, 31-32 (2000), contained penalty/reward structures, and in consideration of the potential benefits to ratepayers. D.T.E. 01-71B at 24 (2001).*

The Department should consider the adoption of a symmetrical system of financial penalties and rewards as part of its SQ Guidelines for two main reasons: (1) the possibility of collecting a financial reward for service-quality improvements will provide a strong incentive to utilities to move forward with service-related investments that

benefit customers; and (2) the potential for a financial reward will offset the impact of penalties that have the potential to result where the utility is held to an ever-increasing performance benchmark during the term of a SQ plan. Moreover, it is well within the Department's authority to establish a symmetrical penalty and reward system should the Department determine that such a system would provide benefits to customers.

In Massachusetts Electric Company, D.T.E. 01-71B (2002), the Department approved an SQ plan that included the payment of financial incentives under certain circumstances. D.T.E. 01-71B at 22. In doing so, the Department noted that the financial incentive would provide the opportunity for the utility to "recover some of its costs" and, as a result, would encourage the company to make investments designed to improve service quality over time. Id. The Department's observation is on target because the availability of a financial reward will provide a strong impetus for utilities to improve performance over historical levels.

There are three main reasons that this incentive exists. First and foremost is that it takes substantial investment to achieve improvements in service quality in excess of the deadband threshold of one standard-deviation. With most performance measures, the utility may be able to make smaller, less costly changes to produce marginal improvements in the level of performance historically achieved by the utility. However, it is generally impossible to achieve performance that is greater than one standard deviation over the historical level without purchasing a new information system, installing new equipment or investing significant resources into distribution infrastructure and facilities. The availability of a financial reward would act to defray the cost of the investment required to achieve the service-quality improvement, even if the reward is

relatively small in comparison to the cost of the system upgrade or infrastructure investment.

In that regard, the Department noted its concern in both D.T.E. 01-71B and D.T.E. 99-84 that a penalty/reward system would have the potential to motivate significant investment while producing only marginal benefits. D.T.E. 01-71B at 23; D.T.E. 99-84 (Interim Order), at 45-46. However, given the types of system investments that are required to achieve such large leaps in service quality, it is highly unlikely that even the maximum financial reward (under the Department's current structure) would go so far in defraying the cost of the investment that a utility would be motivated to make the investment solely because the reward is available.

A second reason that financial incentives would be beneficial is that there are instances where the utility may be put into a penalty position on a particular measure as a result of one-time operational changes or other singular events that are not outside the utility's control, but are also not the result of service degradations. In these cases, if the utility is able to collect a financial reward for improving service quality over historical levels, the utility will be much more likely to engage in one-time operational changes to improve service quality, although the changes may have the potential to cause short-term setbacks in performance during the implementation phase. Currently, utilities are faced with a disincentive to make substantial changes that have the potential to disrupt performance because there is no basis for exclusion of this event from the service-quality performance metrics, and therefore, no way to recoup the penalty dollars even though service to customers may be vastly improved in the future.

A common example of this dynamic is when a utility is considering the implementation of a new customer-service system, which is a highly complex and somewhat unpredictable undertaking in terms of foreseeing all possible contingencies that could occur during implementation. Although the implementation of a new customer-service system requires significant investment, and will ultimately result in better service to customers, there is a strong potential for a utility to be penalized as a result of increased (and unavoidable) customer calls to the company during the implementation phase, which may place the utility in a penalty position – although service quality has not actually "declined." If the utility were to have the opportunity to gain a financial incentive for good performance following system implementation, the utility would have a strong incentive to invest in the system and to work to improve service as quickly and efficiently as possible following system implementation. The financial incentive would be meaningful to the utility because (1) it would defray the cost of the system investment; and (2) it would offset the cost of any penalties incurred as a result of the implementation.

Lastly, like the offset provision, financial incentives would serve to counteract the operation of the Department's "rolling" benchmark system. As noted above, if the utility has less than 10 years of annual data available, new performance data is rolled in to the historical average on a year-to-year basis until such time that 10 data points are incorporated into the benchmark. SQ Guidelines at I.C. With the continual incorporation of new performance data, it is possible that the benchmark will be raised above historical levels in circumstances where the utility has greatly improved its service after the commencement of the SQ Plan. With an ever-increasing benchmark, there is the

potential that a utility could be penalized for service that falls below the new deadband threshold, but in fact, is at a level that exceeds the level of service provided to customers at the outset of the PBR Plan. Financial incentives would provide an opportunity for the utility to offset penalties that may result from the rolling average.

Accordingly, the SQ Guidelines established by the Department should include the reasonable opportunity for utilities to be rewarded for service-quality performance in excess of historical levels. Moreover, because the financial reward system would be triggered only as a result of a demonstrated increase in customer service, reliability or safety, it is well within the Department's authority to allow the recovery of the financial reward. The Department's authority to set rates for customers to allow revenue recovery by the utilities is plenary. G.L. c. 164, §94, see also Boston Edison Company v. City of Boston, 390 Mass. 772 (1984). Customers would be the direct beneficiaries of any service improvements, and therefore, the establishment of a financial incentive is warranted and appropriate.

6. Customer Service Guarantees: *LDCs are currently required to pay $25.00 to any customer if they fail to meet a scheduled service appointment or fail to notify a customer of a scheduled outage. D.T.E. 99-84, at 38. Please discuss whether the future Guidelines should require (a) payment to customers whether or not the customer requests the credit; and (b) classification as a missed service appointment if the LDC contacts the customer within four hours of the missed appointment and re-schedules the appointment.*

A. Payment of Customer Service Guarantees

The Company currently makes payment of the $25 customer guarantee for missed appointments and planned outages whether or not the customer requests the credit. Accordingly, the Company has no objection to a requirement in future guidelines.

B. Classification of a "Missed Appointment"

In future SQ Guidelines, the Department should not require classification of a "missed" service appointment in instances where the distribution company has contacted the customer and rescheduled the appointment. The utility must have some flexibility to schedule and reschedule appointments because there are several layers of complexity that must be considered in relation to the utility's scheduling activities. Therefore, if the company has made the effort to contact the customer and reschedule the appointment because of shifting service requirements on a given day, it should not be counted as a "missed" appointment subject to a penalty.

For example, routine service appointments are scheduled in blocks in advance of the date of the appointment. There is no way for the company to foresee, at the time the appointment is made, what the weather will be on the date in question, nor is there any way for the company to pinpoint precisely the amount of time that a series of appointments will take on the date in question. In addition, the company needs to strike a balance between booking enough appointments to ensure that as many customers as possible receive a timely service appointment by the company, and allowing flexibility in the schedule to deal with unforeseen contingencies.

In that regard, the fact that the company may need to reschedule an appointment does not necessarily mean that the company has fallen short in its commitment to customers, but rather it may mean that field personnel were temporarily diverted to deal with a competing and (legitimate) service need in the field. For example, field-service technicians may be rerouted by the work management system to respond to an emergency odor call. The company needs to rely on all available field resources to respond to these

calls to ensure public safety. However, this will cause a technician to be waylaid in performing routine service appointments, and the remaining service appointments may not be able to be completed as scheduled depending on the time that it takes for the technician to respond to the odor call. In this case, the company may need to call the customer to reschedule.

Given the complexities and competing service requirements involved in day-to-day scheduling of customer appointments, the company needs to have a level of flexibility to manage its operations. If rescheduled appointments are classified as missed appointments, the companies will need to schedule fewer appointments in order to maintain the flexibility to address competing service requirements occurring during the workday.

Therefore, where the company has encountered a service contingency and needs to reschedule an appointment with a customer, the company should not be required to count the appointment as "missed" because the company has, in fact, fulfilled its service commitment through coordination with the customer. If rescheduled appointments are classified as "missed appointments," the company could be faced with a situation where it is placed into a penalty position (and owes guarantee payments to customers), not because there is a decline in service, but because it has had to use available field resources to meet system requirements in areas other than routine service appointments. This is not a reasonable or appropriate result. Accordingly, the Department should not classify rescheduled appointments as "missed appointments" in future guidelines.

7. Property Damage: *The Department established a reporting requirement regarding losses related to damage of company-owned property as it was likely to contribute to assessing company safety performance. D.T.E. 99-84, at 17. Please discuss whether this reporting requirement should be made a penalty measure in the future Guidelines.*

The current requirement to report information regarding damage to company property should not be made a penalty measure in future Guidelines. Currently, the gas companies report property-damage incidents involving damage to Company-owned facilities exceeding $5,000 per incident because the Department has determined that this information will assist in its review of service-quality performance. However, damage to company property is not necessarily indicative of a service-quality problem, nor is damage to company property susceptible to objective year-to-year comparisons in terms of quantifying and determining whether there has been a "decline" or "improvement" in terms of the company's performance. Therefore, this data is not of the type that can provide a basis for a monetary penalty.

The Department has stated that service-quality measures first and foremost are "designed to prevent deterioration of the service quality ratepayers are entitled to receive." Interim Order at 43. To the extent that that there is a determination that customers have been denied service that they are due based on an analysis of quantifiable, objective data measuring service quality performance, customers "must then be made whole by a financial exaction from the utility for its delinquency." Id. The Department has further stated that the financial exaction is "conceptually akin to liquidated damages in contract law." Id. at 44. Accordingly, the Department has recognized that service quality penalties are designed to be to "damages" paid as if the company had breached a contract with its customers.

As a result, each individual event would need to be reviewed so that a determination could be made as to the "causes" of the event. This determination would necessarily be subjective in nature, which makes the measure unsuitable for a penalty mechanism. All other penalty measures established by the Department are objectively quantified metrics where the Department has established rules regarding the collection of data statistics and no subjective review of the data is required or allowed. In that regard, the Department has stated that "[w]hen properly collected and interpreted information shows that SQ has not achieved, or has fallen below, the benchmark for the measured activity, then ratepayers are conclusively presumed to have been denied the service they are due." Interim Order at 43. A conclusive presumption that customers have been denied service cannot be made based on either the number or dollar amount of damage to company property incidents.

Specifically, it is difficult to see how "performance" would be quantified to enable a year-to-year comparison and determination that "service" is, in fact, declining, therefore justifying the imposition of a penalty. For example, year-to-year changes in the dollar amount of damage to company property in a year would not necessarily indicate a change in service since some pieces of equipment are far more costly than other pieces. The company could experience just one event of damage to an expensive piece of equipment and in another year have several events adding up to less money. The company could actually have experienced an improvement in service-quality "performance" with just one event, despite the fact that the dollar amount in that year was greater than the year before because the number of incidents would have declined (assuming the "causes" of the incidents were related to the company's service-quality

performance). Conversely, a change in the number of events may not necessarily indicate a change in service-quality performance, since each event may be "superficial" or relatively minor incidents as compared to past events. The fact that events are held to only "minor" incidents in a given year may actually indicate an improvement in service quality (to the extent that the "causes" of the incident are determined to relate to the company's service-quality performance.

Moreover, gas companies in particular are subject to stringent federal (United States Department of Transportation) and state safety policies that require the companies to report damage to their property. These federal and state authorities may fine gas companies for failure to maintain company property in proper condition. Accordingly, the Department need not subject companies to further penalties in an area of company operations that is already subject to rigorous oversight.

In the end, there are just too many subjective components of the damage to company property statistic to make this measure an appropriate candidate for a service quality penalty. Damage to company property is neither sufficiently objective nor quantifiable for purposes of determining a penalty. The Department would have to investigate every instance of "damage" to Company property in order to properly determine whether the dollar impact of the damage, the quantity of incidents, or the nature of the damage has a proper nexus between the Company's operational performance and its customers to warrant a penalty. The lack of a nexus between an incident that caused damage to company property and the company's customers should, in and of itself, disqualify this measurement category from consideration as a penalty measure.

The Department has also recognized that this measure, while potentially indicative of a company's safety performance, was not accepted by any jurisdiction that regulated utility service quality as a measure for which a penalty should be potentially imposed.[8] Accordingly, the Department should not include damage to company property as a penalty measure in future Guidelines.

8. Line Loss: *In D.T.E. 99-84, at 18, the Department acknowledged that an electric distribution company may experience percentage variations in line losses from year to year unrelated to SQ degradation. Please discuss whether line losses should be made a reporting requirement in the future Guidelines.*

As a practical matter, the companies do not object to the Department's existing requirement that line losses (or unaccounted for gas) be reported as part of the annual service-quality reports. The companies have been providing this information to the Department under the current guidelines, as well as to other regulatory authorities in FERC Form 1 and Department of Transportation reports, and the tracking and reporting of this information places no significant administrative burden on the companies.

However, the question correctly recognizes that line losses (and unaccounted for gas) are generally unrelated to the utility's service-quality performance. Accordingly, eliminating this reporting requirement from future SQ guidelines would be consistent with maintaining the integrity of the Department's service quality policy as one which holds electric and gas companies accountable only for those operational areas that are within their control.

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8 Specifically, the Department has acknowledged previously that this type of data has not been required by other state public utility commissions to be reported as a service quality measure. D.T.E. 99-84, at 17, n.14 (citing 14 states other than Massachusetts that had adopted or pending service quality plans).